



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 3421-99
27 April 2000

BUCS [REDACTED] USN
[REDACTED]
[REDACTED]

Dear Senior Chief [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 26 July 1999, 3 February 2000 and 7 March 2000, copies of which are attached. They also considered your rebuttal letters dated 23 September and 18 December 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions. They were unable to find that your command took nonjudicial punishment (NJP) action against you solely to make an example of you. The endorsement dated 15 May 1999 from your former commanding officer (CO) did not persuade them that the contested NJP should be set aside or that the contested evaluation should be removed. In this regard, they were not persuaded that your punishment was unduly harsh for the offenses you were found to have committed; nor could they find that your reporting senior had inadequate opportunity to observe your performance, noting that observation need not be direct. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board wishes to inform you that you may submit your former CO's endorsement dated 15 May 1999 to your current CO in support of a request to have your NJP set aside.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

3421-99



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

IN REPLY REFER TO

5819
20.1/2775
26 Jul 99

From: Deputy Assistant Judge Advocate General (Criminal Law)
To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO [REDACTED]
[REDACTED]

Ref: (a) BCNR ltr BJB Docket No. 3421-99 of 10 Jun 99

1. The following comments and recommendation are provided in accordance with the reference regarding the request by [REDACTED] to remove from his service record evidence of a nonjudicial punishment (NJP) imposed by Commander, Naval Submarine Base, Kings Bay, Georgia, on 23 October 1997.

2. Commander, Naval Submarine Base, Kings Bay, determined that [REDACTED] made two false official statements by signing an incomplete request leave form and an untrue overseas screening form in violation of UCMJ, Article 107. Punishment imposed was forfeiture of one-half month's pay per month for two months, and a punitive reprimand.

3. Additionally, after review of all the evidence Commander, Naval Submarine Base, Kings Bay, determined that nonjudicial punishment was not warranted for other alleged misconduct (i.e., fraternization, larceny, or another false official statement).

4. The information forwarded for legal review provides only BUCS [REDACTED] version of the events that led to nonjudicial punishment being imposed. Even so, the following is clear from the matters presented:

a. BUCS Peluso did not appeal the NJP imposed on 23 October 1997. The appeal of a nonjudicial punishment is provided for by statute and is the first and best opportunity to correct an NJP that was unjust or punishment that was disproportionate to the offense. Failure to pursue this opportunity for redress inhibits the creation of an adequate record for review in later proceedings (i.e., BCNR).

b. The petition for relief submitted by [REDACTED] does not deny the offenses for which he was punished, but merely attempts to mitigate their seriousness. He does not present any new evidence that was not available to his commander at the time his NJP was imposed. BUCS [REDACTED] provides an endorsement from his current commanding officer and a letter from his previous office-in-charge, which address his outstanding attitude and work performance before and after the NJP. While his attitude and work performance has been meritorious, it does not address the factual determination of whether he committed the alleged misconduct which formed the basis of the NJP.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO BUCS [REDACTED]

A. [REDACTED]

5. The nonjudicial punishment imposed on [REDACTED] 23 October 1997 was not unjust and the punishment was not disproportionate to the offense. The imposition of nonjudicial punishment was legally sufficient and removal of the subject NJP is not recommended.

[REDACTED]



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

3421-99

1610
PERS-311
3 FEB 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: BUCS [REDACTED], USN [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his performance report for the period of 16 September 1997 to 31 October 1997.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire to submit a statement. The member's statement is on file.

b. The member alleges that the NJP imposed was unfair and unjust due to not being proportional to the alleged offenses; therefore, he feels that the fitness report in question does not accurately reflect his performance.

c. The report in question was prepared per the guidelines outlined in reference (a) and is procedurally correct. The reporting senior may properly comment or assign grades based on performance of duty or events which occurred during the reporting period. Nothing provided in the member's petition demonstrates that the reporting senior acted improperly, violated requirements, or that he abused his discretionary authority in evaluating the member's performance.

d. The report represents the judgment and appraisal responsibility of the reporting senior for a specific period of

Subj: BU [REDACTED] USN [REDACTED]

time. It is not required to be consistent with previous or subsequent reports, and is not routinely open to challenge.

e. The member does not prove the report to be unjust or in error.

3. We recommend retention of the report as written.

[REDACTED]

Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

3421-99

5420
PERS-832C
7 Mar 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: BUCS [REDACTED], USN [REDACTED]

Ref: (a) JAG ltr 5819 20.1/2775 of 26 Jul 99
(b) MILPERSMAN 5812-010
(c) JAGMAN 0118
(d) NMCB 5 ltr 1520 Ser CO/438 of 15 May 99

Encl: (1) BCNR File 03421-99
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for removal of derogatory material.

2. The review reveals that reference (a) determines the NJP of 21 Oct 97 to be valid and all documentation should remain in the record. However, the petitioner's current commanding officer may, at his discretion, set aside the NJP in accordance with references (b) and (c). Reference (d) provides convincing argument in favor of set aside to assist the present commanding officer. Therefore, favorable action on this petition is not recommended at this time. If the NJP is subsequently set aside, then all NJP documentation should be removed.

[REDACTED]

Technical Advisor to the
Head, Enlisted Performance
Branch (PERS-832)